

## EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

JLB REALTY, LLC, :  
Plaintiff, :  
vs. : CASE NO.  
CAPITAL DEVELOPMENT, LLC, : 1:09-cv-00632-BEL  
Defendant. :

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Deposition of PAUL JOHNSTON, as  
Corporate Designee pursuant to Rule 30(b)(6) for  
JLB Realty, LLC, taken on Friday, August 14,  
2009, at 9:40 a.m., at the law offices of Sellman  
& Hoff, 201 North Charles Street, Baltimore,  
Maryland, before Paul A. Gasparotti, Notary  
Public.

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Reported by:  
Paul A. Gasparotti

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## 1 APPEARANCES:

2  
3 JOHN T. PRISBE, ESQUIRE

4 Venable, LLP

5 750 East Pratt Street

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7 Baltimore, Maryland 21202

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10 jtpbrisbe@venable.com

11 On behalf of the Plaintiff

12 ALAN J. HOFF, ESQUIRE

13 Sellman Hoff, LLC

14 201 North Charles Street, Suite 1331

15 Baltimore, Maryland 21201

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17 (410) 332-1746 (Fax)

18 ahoff@sellmanhoff.com

19 On behalf of the Defendant

20  
21 ALSO PRESENT: David Holmes

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## 1 PROCEEDINGS

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3 PAUL JOHNSTON,

4 being first duly sworn to tell the truth, the

5 whole truth, and nothing but the truth, testified

6 as follows:

7 EXAMINATION BY COUNSEL FOR DEFENDANT

8 BY MR. HOFF:

9 Q. Mr. Johnston, state your name and spell  
10 it for the record please.

11 A. Paul Johnston, P-A-U-L, J-O-H-N-S-T-O-N.

12 Q. And your home address please?

13 A. 7013 Westlake Avenue, Westlake is one  
14 word, Dallas, Texas 75214.

15 Q. And your work address?

16 A. 909 Lake Carolyn, C-A-R-O-L-Y-N,  
17 Parkway, Suite 960, Irving, Texas, Irving spelled  
18 I-R-V-I-N-G, ZIP code 75039.

19 (Discussion off the record.)

20 Q. You are an employee of JLB?

21 A. Correct.

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1 Q. How long?

2 A. Two years, two months.

3 Q. What's your current title?

4 A. Operating partner.

5 Q. Where does that put you in the pecking  
6 order?7 A. There's an executive committee really of  
8 six people, and I'm one of those.9 Q. And the executive committee essentially  
10 runs the company?

11 A. Right, we make all the key decisions.

12 Q. Is there a CEO?

13 A. Glen Jones.

14 Q. CFO?

15 A. Chuck Carey.

16 Q. Chairman of the board?

17 A. Not really.

18 Q. Are there any executive VPs or anything  
19 like that?20 A. The structure of the company, to better  
21 answer that, there's JLB Partners LP, it's a

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1 partnership that is managed by the executive  
2 committee I just described. There is no  
3 executive vice president of that entity.4 Q. So, are you really effectively an  
5 employee of JLB Partners?

6 A. Yes.

7 Q. And is JLB Realty an affiliate of the  
8 JLB Partners?

9 A. Yes.

10 Q. Is JLB Realty a single purpose LLC?

11 A. Yes, it's the entity that we use to  
12 contract and purchase real estate.13 Q. Do you set up a separate entity for each  
14 particular deal you're going to go in?

15 A. No.

16 Q. So JLB Realty may have had a contract on  
17 this particular piece of property and may be  
18 involved in other transactions?

19 A. Correct.

20 Q. Is JLB Realty the entity that you  
21 exclusively use for real estate transactions?

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1 foundation. I'm not sure I understood what your  
2 question is.

3 MR. HOFF: I'm not certain what there is  
4 to understand.

5 Q. Was the project at Washington Hill  
6 terminated?

7 A. Yes.

8 Q. Did JLB terminate it?

9 A. Yes.

10 Q. And my question is, were the reasons the  
11 same as with the Washington Hill project, and you  
12 said in part.

13 MR. PRISBE: Objection to form. I think  
14 you first jumbled Washington Hill, but that's --  
15 why don't you ask him what the reasons were.  
16 That's the easiest way.

17 MR. HOFF: I'm going to actually ask the  
18 questions in the way that I thought it was  
19 appropriate, because he said they terminated the  
20 Federal Hill project because there wasn't, I  
21 think you described it as an appetite in the

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1 obviously we have had to reassess our entire  
2 business model and go back and look at a lot of  
3 different things, including everything from cash  
4 flow to employment, to which projects we were  
5 willing to move forward on, and the stage each of  
6 those projects were and factors involved with  
7 those projects. We had an instance here where we  
8 felt we still had, and were under advice that we  
9 still had contractual rights which we chose to  
10 execute. And we look at the projects that we had  
11 and decided which ones could we reasonably move  
12 forward on, which ones do we know that we can  
13 deliver. And in the development industry, as far  
14 as delivering a project, that does include debt,  
15 that does include equity, that does include  
16 entitlements, that does include title issues,  
17 that does include the cost of money to pursue the  
18 project that we loosely refer to as pursuit  
19 costs, which can be design services, earnest  
20 money, those types of things.

21 We had a seller that already told us he

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1 equity market for the project, correct?

2 MR. PRISBE: Just for the record, I  
3 think he said South Charles, but be that as it  
4 may --

5 MR. HOFF: Okay.

6 Q. Would you prefer I call it the South  
7 Charles project?

8 A. Yes.

9 Q. And then I believe you said that the  
10 Washington Hill project was terminated in part  
11 for the same reasons, correct?

12 A. The lack of debt and equity in the  
13 commercial real estate development market was one  
14 of the reasons in a list of reasons why  
15 Washington Hill did not go forward.

16 Q. And what would that list of reasons have  
17 been?

18 A. To go to, for background I guess you  
19 might say, I mean, obviously the commercial real  
20 estate development market is in a state that it  
21 has not been in since the '20s or '30s. And

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1 was going to fight us over the earnest money if  
2 we chose to execute the contractual right that we  
3 had, and so we decided at that point that it was  
4 time to terminate the project.

5 Q. You told me there was a list of reasons,  
6 and you proceeded to say that you were advised  
7 that you had the contractual right to terminate,  
8 and I assume that was advice from counsel?

9 A. As well as my opinion.

10 Q. As well as your opinion, fine. My  
11 question to you is, what were the reasons why you  
12 exercised that contractual right?

13 MR. PRISBE: Objection. I think he just  
14 answered.

15 A. I just answered that.

16 Q. Well, you proceeded to give me sort of a  
17 laundry list of every reason under the sun. I'm  
18 asking what in your mind drove the decision that  
19 we are going to terminate this contract?

20 MR. PRISBE: Objection to form and  
21 foundation, and I believe it's been asked and

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1 answered.

2 A. I mean, in my mind I described, and in  
3 my opinion the issues involved were basically, in  
4 any business you make a decision based off risk  
5 and reward, and you look at what do you feel like  
6 you could deliver, and this project was not a  
7 certain deliver, so to speak. We had a million  
8 dollars up at risk that the seller had already  
9 told us he was going to fight us over. I'm of  
10 the opinion then, as of now, and received counsel  
11 then and now that we still maintain the  
12 contractual right to terminate this project and  
13 receive the earnest money refund. So we made the  
14 business decision to terminate the project,  
15 recoup the million dollars with the intent of  
16 still negotiating with the seller if he was still  
17 willing to, to see if there was a project to be  
18 had, to be developed.

19 Q. When was the decision made to terminate  
20 the contract and recoup the earnest money?

21 A. There was no exact date in my mind that

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1 I recall. There had been discussion about  
2 terminating probably since the beginning of the  
3 latter part of the fourth quarter of last year.

4 Q. So in the November-December time frame?

5 A. Right. And then I called Gary in  
6 December, I don't know the exact date, and  
7 instructed him to terminate the contract.

8 Q. Do you know when in December?

9 A. No.

10 Q. Now, was this a decision by you or a  
11 decision by the board?

12 A. It was a decision that was discussed  
13 within the executive group. I was of the opinion  
14 that we needed to do it. I received concurrence  
15 from others and so I called Gary.

16 Q. And you gave him instructions to  
17 terminate in December?

18 A. Correct.

19 Q. Do you know when he did in fact  
20 terminate?

21 A. He went and met with, can I call him

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1 Dave?

2 Q. Sure, if you're willing to.

3 A. He met with Dave in late December and  
4 relayed that news that there was an intent to  
5 terminate. He did not terminate the contract as  
6 he had been told to. He started having some  
7 discussions I think with, or I know with Bay,  
8 about trying, instead of terminating,  
9 renegotiating the entire basic purchase  
10 structure, and so the termination didn't happen.

11 Q. Do you know why Gary did not follow your  
12 instructions?

13 A. No.

14 Q. Were you aware of it at that time, in  
15 late December, early January, were you aware that  
16 Gary had not followed your instructions to  
17 terminate the contract?

18 MR. PRISBE: Objection to form to the  
19 extent it's vague. You can answer.

20 A. Yes.

21 Q. Did you talk with him about that?

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1 A. Yes.

2 Q. And what was said in that discussion?

3 A. I don't recall the exact words  
4 obviously, but I think the general nature of it  
5 was that he was doing what any good development  
6 guy would, he was fighting to save his project,  
7 and so he was wanting to say let's not terminate,  
8 let's go back and try to restructure something  
9 that would be agreeable to both parties, and  
10 that's what was proceeded with.

11 Q. Did he relay to you what his discussion  
12 with Dave Holmes was in late December?

13 A. No.

14 Q. Do you have any personal knowledge  
15 sitting here today as to exactly what he told  
16 Dave Holmes in that discussion?

17 A. I was not present at the meeting  
18 obviously.

19 Q. Did you ever get a report from anybody  
20 as to what Dave Holmes was told in that December  
21 time frame?